

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN THE MATTER OF

ESTABLISHMENT INSPECTION OF:

24 MC 6011 MWP
File No.

Fred A. Nudd Corporation
1743 State Route 104
Ontario (Wayne County), New York 14519

DECLARATION PURSUANT TO 28 U.S.C. § 1746

I, LYDIA CALDERON, declare under penalty of perjury that the following is true and correct:

1. I am a Compliance Officer with the Syracuse Area Office of the Occupational Safety and Health Administration, United States Department of Labor (“OSHA”). I am fully familiar with the facts and circumstances of this case. I submit this Declaration in support of the Acting Secretary of Labor’s Ex-Parte Application for an Inspection Warrant in this matter.

2. The primary duty of my position is to conduct workplace investigations to ascertain if employers are in compliance with the safety and health standards promulgated under the Occupational Safety and Health Act of 1970.

3. On or about July 8, 2024, I was assigned to conduct an inspection of Fred A. Nudd Corporation’s workplace by my supervisor, Assistant Area Director Susan Zampella. Fred A. Nudd Corporation (“Fredd A. Nudd”) performs comprehensive metal fabrication services for large industrial products and produces cell phone towers. Fred A. Nudd’s workplace consists of an approximately 44,000 square foot facility located at 1743 State Route 104, Ontario, New York 14519 (“the workplace”).

4. On July 11, 2024, I arrived at the workplace at approximately 10:30 a.m. When I arrived, I was met by Lyle Nudd, self-identified as a co-owner of Fred A. Nudd. I stated that I was at the workplace to conduct an OSHA inspection, presented my credentials and business card, and requested to have an opening conference.

5. Mr. Nudd invited me into the front office, and we started the opening conference. I explained that I was at the workplace to conduct an inspection pursuant to OSHA's National Emphasis Program on Amputations in Manufacturing Industries. I gave Mr. Nudd a letter explaining the purpose of the inspection. A true and accurate copy of the letter is attached as Exhibit 1. Mr. Nudd provided me with some company information including the number of workers employed at the workplace and the company's OSHA injury and illness logs for 2021 and 2023. The signed OSHA-300 injury and illness log provided by Mr. Nudd indicated that the company had 12 employees as of January 2024.

6. I then requested some additional documents from Mr. Nudd and asked to move ahead with the onsite inspection. Mr. Nudd stated that I was not permitted to inspect the workplace without a warrant. Mr. Nudd told me that he was denying entry at the direction of Lowell Nudd, identified as a co-owner and Vice President of the company.

7. I then spoke with Lowell Nudd over the telephone, and he reiterated that OSHA could not inspect the workplace without a warrant.

8. I reported the denial of entry to my supervisor by telephone and left the workplace at approximately 11:05 a.m.

9. Due to the type of work performed by the company as indicated on Fred A. Nudd's website, employees are potentially exposed to hazards from equipment such as, but not limited to sheers, press brakes, and sheet metal rollers. When I reviewed the company's 2021 OSHA injury and illness log, I noticed a record of an employee suffering a crushing injury while operating a sheet metal roll.

I submit this Declaration in support of the Acting Secretary of Labor's Application for an Inspection Warrant. I declare pursuant to 28 U.S.C. § 1746 under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on July 29, 2024



LYDIA CALDERON, Compliance Officer
Occupational Safety & Health Administration
Syracuse Area Office
3300 Vickery Road
North Syracuse, NY 13212

Declaration submitted electronically by email in .pdf format.
Oath administered, and contests and signature attested to me
telephonically on August 1, 2024.

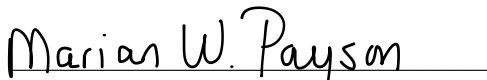

HON. MARIAN W. PAYSON
United States Magistrate Judge

EXHIBIT 1

U.S. Department of Labor

Occupational Safety and Health Administration
Syracuse Area Office
3300 Vickery Road
North Syracuse, NY 13212
Telephone: (315) 451-0808
OSHA Website: <http://www.osha.gov>



Dear Employer:

Your workplace has been selected for an inspection in accordance with an OSHA National Emphasis Program. The information in this letter should help you understand how and why your establishment was selected for an inspection.

It is OSHA's policy to concentrate its resources on workplaces having the greatest potential for safety and health hazards. A procedure is used to identify industries which pose particular risks, and randomly select establishments within those industries for inspection.

Your company is part of an industry group that has machinery and equipment exposing employees to the following hazards: nip points, pinch points, shear points, cutting actions and other point(s) of operation. It has been determined that workplaces with these types of hazards have caused or are capable of causing amputation injuries.

The Syracuse Area Office has compiled a register of establishments belonging to these types of hazards. During the current year we will conduct inspections at a number of sites which were randomly chosen from the list. Your site has been selected for such an inspection.

Thank you for your cooperation in this program. If you have any questions, your compliance officer is available to discuss them with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey P. Prebish", is written over a horizontal line.

Jeffrey P. Prebish, MS, CIH, CSP
Area Director
Syracuse Area Office